

**REMARKS**

Claims 1-20 are pending in this application. Claims 1 and 5 are the independent claims. Claims 1 and 5 are amended. Claims 12 and 19 are cancelled without any intent of prejudice to or disclaimer of the subject matter contained therein. Reconsideration and allowance of the present application is respectfully requested.

**Entry of Amendment After Final Rejection**

Entry of the Amendment is requested under 37 C.F.R. § 1.116 because the Amendment: a) places the application in condition for allowance for the reasons discussed herein; b) does not present any additional claims without canceling the corresponding number of final rejected claims; and/or c) places the application in better form for an appeal, if an appeal is necessary. Entry of the Amendment is thus respectfully requested.

**Statement Under 37 C.F.R. §1.133(b)**

In response to the telephonic interview conducted February 16, 2010 and the Examiner interview summary issued February 23, 2010, Applicant wishes to thank the Examiner for the courtesies extended during the interview. Applicant has reviewed the Interview Summary and has found it to be substantially accurate in describing the substance of the interview.

During the interview proposed amendments were presented to the Examiner and the Examiner made several suggestions related to the claim language. The Examiner indicated that he believed that the claim amendments discussed in the interview overcome the 35 USC 112, 1<sup>st</sup> and 2<sup>nd</sup> paragraph rejections on record. The

Examiner also indicated that the claim amendments discussed in the interview likely overcomes the prior art references of record.

### **Example Embodiments**

Example embodiments provide a package with a “flexible bottom” that changes shape when vacuum is applied to the package. Specifically, the “flexible bottom” is convex when the package is not under vacuum, and it is concave when vacuum is applied to the package. When the package is under vacuum and being heated in a microwave, the concave shape of the “flexible bottom” causes the distance between the cover layer and the “flexible bottom” to be less in the center of the package, as compared to the edges of the package. This causes less food to exist in the center of the package (where less microwaves ultimately reach the center of the package), causing a more even distribution of the heating of the food. A second advantage of the concave shape of the “flexible bottom” is that food becomes somewhat pressed toward the edges of the package when the package is under vacuum, thereby minimizing the amount of air left in the package and creating a more thorough vacuum.

### **Typographical Error in the Office Action**

In the Examiner’s 35 USC §103(a) rejection of claims 10, 11, 17 and 18, the Examiner erroneously indicates that the claims are unpatentable over “Haamer in view of Matos.” Because claims 10, 11, 17 and 18 depend from independent claim 5, it is Applicant’s understanding that the Examiner intended to reject claims 10, 11, 17 and 18 as being unpatentable over “Haamer in view of Snyder and further in view of

Matos" (it is noted that the Examiner rejects claim 5 as being unpatentable over "Haamer in view of Snyder").

**Rejections under 35 U.S.C. §112**

Claims 1 and 5 stand rejected under 35 USC §112, first paragraph, as failing to comply with the enablement requirement. This rejection is respectfully traversed.

With regard to claims 1 and 5, Applicant amends these claims in accordance with the claim amendments discussed in the February 16, 2010 Examiner interview. During the interview, the Examiner indicated that he believed the claim amendments overcome this 35 USC §112, first paragraph rejection.

For at least the reasons stated above related to claims 1 and 5, Applicant believes that the claims do not contain subject matter which was not described in the specification. Therefore, Applicant respectfully requests that the rejections of these claims under 35 U.S.C. §112 be withdrawn.

**Rejections under 35 U.S.C. §112**

Claims 1 and 5 stand rejected under 35 USC §112, second paragraph, as being indefinite. This rejection is respectfully traversed.

With regard to claims 1 and 5, Applicant amends these claims in accordance with the claim amendments discussed in the February 16, 2010 Examiner interview. During the interview, the Examiner indicated that he believed the claim amendments overcome this 35 USC §112, second paragraph rejection.

For at least the reasons stated above related to claims 1 and 5, Applicant believes that the claims are definite as they do particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Therefore, Applicant respectfully requests that the rejections of these claims under 35 U.S.C. §112 be withdrawn.

**Rejections under 35 U.S.C. §103 – Haamer in view of Snyder**

Claims 1-9, 12-16 and 19-20 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,437,305 (“Haamer”) in view of (“Snyder”) O.P. Safety of Pasteurized-Chilled Food. This rejection is respectfully traversed.

With regard to independent claim 1, the Examiner asserts that Haamer in view of Snyder teaches or suggests all of the limitations of the claim. Applicant asserts that Haamer in view of Snyder does not teach or suggest “the tray having a flexible bottom and stiff lateral walls extending in the vertical direction of the tray... the flexible bottom along the periphery adjacent the lateral walls being angled causing the flexible bottom to be convex relative to the lateral walls when the package is not under vacuum” and “the vacuum causing the flexible bottom to be concave relative to the lateral walls,” as recited in claim 1. Applicant asserts that neither Haamer, nor Snyder disclose these features at all. As discussed in the February 16, 2010 Examiner interview, the Examiner also indicated that this feature is not disclosed in either Haamer or Snyder.

With regard to independent claim 5, Applicant asserts that claim 5 contains features similar to independent claim 1 such that at least the same arguments can be made.

For at least the reasons stated above related to independent claims 1 and 5, Applicant asserts that these claims are patentable. Due at least to the dependence of claims 2-4, 6-9 12-16 and 19-20 on the respective independent claims, Applicant also asserts that these claims are patentable. Therefore, Applicant respectfully requests that this art ground of rejection of these claims under 35 U.S.C. §103 be withdrawn.

**Rejections under 35 U.S.C. §103 - Haamer in view of Snyder and further in view of Matos**

Claims 10, 17, 11 and 18 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,437,305 ("Haamer") in view of U.S. Patent No.5,780,824 ("Matos"). This rejection is respectfully traversed.

The Examiner asserts that claims 10, 11, 17 and 18 are unpatentable over Haamer in view of Snyder and further in view of Matos. With regard to independent claim 5, Applicant asserts that claim 5 is patentable over Haamer in view of Snyder for at least the reasons stated above. Applicant asserts that a review of Matos indicates that Matos does not remedy the deficiencies of Haamer in view of Snyder, nor does the Examiner rely on Matos for this reason. Therefore, Applicant asserts that claim 5 is patentable over any and all combination of Haamer, Snyder, and Matos.

For at least the reasons stated above related to independent claim 5, Applicant asserts that this claim is patentable. Due at least to the dependence of claims 10, 11, 17 and 18 on claim 5, Applicant also asserts that this claim is patentable. Therefore, Applicant respectfully requests that this art ground of rejection of these claims under 35 U.S.C. §103 be withdrawn.

**CONCLUSION**

In view of the above remarks and amendments, Applicant respectfully submits that each of the rejections has been addressed and overcome, placing the present application in condition for allowance. A notice to that effect is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to contact the undersigned.

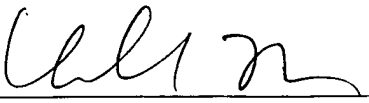
Pursuant to 37 C.F.R. §1.17 and 1.136(a), Applicant hereby petitions for a one (1) month extension of time for filing a reply to the outstanding Office Action and submit the required \$65 extension fee herewith.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact the undersigned at the telephone number below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,  
HARNES, DICKEY, & PIERCE, P.L.C.

By

  
Donald J. Daley, Reg. No. 34,313

P.O. Box 8910  
Reston, Virginia 20195  
(703) 668-8000

<sup>CES</sup>  
DJD/CES:cfc